* **HIGH COURT OF DELHI : NEW DELHI**

Date of decision: September 27, 2007

\+ **W.P. (C) No. 15928/2004**

% Harish Chander ...Petitioner
Through: Mr. D.C. Vohra, Advocate

versus

Union of India & Another ...Respondents
Through: Mr. Yogesh Verma, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J.

1. The Petitioner was appointed in the year 1970 as a Hindi Typist by the respondents. He has since been confirmed in the said post. The said post of Hindi Typist was an isolated one, and not encadred in the Central Secretariat Clerical Services (CSCS), which is governed by the Central Secretariat Clerical Services Rules (CSCS Rules). Consequently, even after 28 years of service, the Petitioner was not given even a single promotion, except upon the up gradation of the

post of Hindi Typist to UDC level. This too was done after the Central Administrative Tribunal, Principal Bench, New Delhi (The Tribunal) intervened vide its order dated 7.12.1995 in O.A. No. 644/1991 at the behest of the Petitioner. However, there was no change in the duties and the responsibilities of the Petitioner. In the meantime, other similarly placed employees who did not belong to any particular cader, and consequently did not have promotional avenues had represented for their encaderment in the CSCS and the same was granted. However, the Petitioner was left out. Even the 5th Central Pay Commission recommended that the post of Hindi Typist be included in the cader of CSCS vide para 77.46 of its report.

2. The Petitioner filed O.A. No. 1254/1996 wherein the Tribunal directed the respondents to consider the claim of the Petitioner for encaderment. However, the Respondent, even in the face of the recommendations of the 5th Central Pay Commission, declined to grant the said relief, vide their order dated 11.2.1998. The Petitioner thereupon filed O.A. No. 1941/1998 which was decided by the Tribunal on 22nd May 2001. The Tribunal substantially allowed the O.A. filed by the Petitioner, except that while issuing its operative directions, it made an observation that the Petitioner would be permitted to reckon his seniority only from the date of his final absorption. The relevant extract of the order dated 22nd May 2001 in O.A. No. 1941/1998 is reproduced herein below:

“6. We have carefully considered the matter. The applicant has been functioning as a Hindi Typist for the last 28 years without any promotion. In spite of working as Hindi Stenographer and Sr. Hindi Translator for some time he has been reverted to his substantive post as Hindi Typist. Hence his request for better treatment by the Government by way of access to promotional avenues. FCPC, who have examined his case and recommended the encadrement of his post in CSCS. So as to alleviate the difficulties but the same has been negatived by the respondents on the spacious arguments that CSCS Rules do not provide for it, while 24A, permitting relaxation could very well have been utilized for the above. It cannot be the intention of the Government that a person who joins service should not get any promotion at all in the entire career and should retire from the very post in which he joined service. Still the respondents have done nothing to improve the situation. Their reluctance is all the more clear when it is found that they have express their willingness to encadre the post but without the incumbent. This cannot be permitted. It is also interesting to note that the respondents who totally defend and justify the encadrement in CSCS of ad hoc LDCs/UDCs in the office of the Registrar of Newspapers are against the adoption of the same measure in the case of the applicant though he is also similarly circumstanced, more so when the encadrement of just one post with the incumbent would not prejudice anybody's interest. respondents have not taken any concrete steps to give effect to Tribunal's order except to state that on consideration of the issue they are not able to do anything. This is a case where the Tribunal has to enter and do justice to the applicant and we proceed to do so.

7. In view of the above, the application succeeds and is accordingly allowed. The impugned order dated 11.2.1998 is quashed and set aside and the respondents are directed to take action at the earliest and in any event

> within two months from the date of the receipt of this order to encadre the post of Hindi Typist in CSCS, taking recourse to Rule 24A of the CSCS Rules, providing for relaxation. **The applicant will have to be absorbed as UDC in the above cadre but he will be permitted to reckon his seniority only from the date of his final absorption.** He would also be entitled for protection of his pay and allowances being drawn by him."
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> (Emphasis supplied)

3. The Petitioner is aggrieved by the direction whereby his seniority upon absorption into the CSCS Cadre as UDC has been directed to be fixed only from the date of absorption, thereby nullifying his past service for purposes of seniority altogether.

4. The petitioner has therefore sought a writ of certiorari to quash the concluding portion of the judgment passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1941/1998, decided on 22.5.2001. The Petitioner has also sought a writ of mandamus to direct the respondents that his entire service since 1.8.1970 should be accounted for after the encaderment of the post held by him of Hindi Typist under the CSCS Rules.

5. Though the Petitioner has been encadered in the CSCS vide order dated 23/24th of July 2001 on the post of UDC, on account of the aforesaid highlighted observations of the Tribunal his service of nearly 31 years was ignored by the respondent. The Petitioner therefore represented to the respondents against the same and this representation was rejected vide order dated 2.8.2002. The Petitioner thereafter filed O.A. No. 12/2003, which was disposed of by the

Tribunal on 3.1.2003. The Tribunal held that unless the observations of the Tribunal in O.A. No. 1941/1998, to the effect that the Petitioner will be permitted to reckon his seniority only to the date of his final absorption is deleted, no relief could be granted to the Petitioner. Accordingly the O.A. was disposed of directing the Petitioner to file an appropriate application for modification/deletion of the aforesaid observation of the Tribunal in the order dated 22.5.2001 passed in O.A. No. 1941/1998.

6. The Petitioner thereafter filed R.A. No.142/2003 in MA No.1033/2003 in O.A. No. 1941/1998 which has been dismissed by the Tribunal vide order dated 2nd December 2003. The Tribunal held that there was no error apparent on the face of the record and did not go into the issue whether the aforesaid direction was sustainable or not. This order passed in R.A.No. 142/2003 dated 2nd December 2003 is also impugned before us.

7. The short question that arises for our consideration, therefore, is whether the Tribunal in the first instance was justified in directing that the Petitioner while being absorbed as UDC in the cader of CSCS would be permitted to reckon his seniority only from the date of his final absorption.

8. Having given our thoughtful consideration to the matter, we are of the view that the claim of the Petitioner is entirely justified.

9. The Petitioner has admittedly rendered service as Hindi

Typist since 1.8.1970. He was absorbed in the CSCS only with effect from 27.7.2001. The effect of reckoning his seniority in the CSCS w.e.f. 27.7.2001, in the grade of UDC is that his nearly 31 years of service has been wiped out and he would be ranked junior to all other UDCs in the cadre of CSCS appointed before the date of his absorption i.e. 21.7.2001.

10. The Petitioner has drawn our attention to the order passed by the Tribunal in O.A. No. 2013/1998 dated 3rd February 2001 in the case of ***O.P. Verma vs. UOI and others***. The Petitioner, in that case was an Electronic Typewriter Operator. Like the Petitioner he also sought encaderment of the isolated post held by him in the CSCS. The said OA was allowed by the Tribunal. However, no such limitation regarding the fixation of his seniority was imposed upon that Petitioner. Even the writ petition filed by the UOI being W.P. (C) No. 2943/2001 against the said order by the Tribunal was rejected by this Court on 8.3.2002. The UOI had challenged the order of the Tribunal in the case of OP Verma by taking the stand that the Government of India was agreeable for encadrement of vacant posts in CSCS cadre, but was not agreeable to encader the occupied posts of Electronic Typewriter Operator into CSCS on regular basis. This stand of UOI was expressly rejected by this court in its aforesaid judgment. Operative part of the order of this Court reads as follows:

> "We do not find any infirmity in the aforesaid order passed by the Tribunal. There is no logic

> in the stand of the petitioners that while they are willing to encadre the occupied post of ETO. The stand is absolutely arbitrary, unfair and unreasonable. **The Respondent has served in the capacity of ETO for a period of 23 years. His 23 years service cannot be lost just because the petitioners are not filling to encadre the occupied post of ETO while they have no objection to encadrement of the vacant posts of ETOs.**
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> **We do not find any merit in the writ petition. Accordingly, the writ petition fails and is hereby dismissed."**
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> (emphasis supplied)

11. The Petitioner also argues that in the case of OP Verma Shri Verma had to initiate CP No.12/2004 wherein the respondents UOI once again resisted the implementation of the order of the Tribunal on the ground that the grant of seniority to Shri Verma from the date of his initial appointment as ETO would upset the seniority of UDCs in the CSCS. However, this submission was rejected by the Tribunal. Thereafter, vide order dated 28th June 2004, Shri OP Verma was granted the seniority as UDC with effect from 1.12.1975 which was the date of his appointment as ETO.

12. The Petitioner has also placed reliance on the decision of the Supreme Court in ***UOI and Others vs. Shri Pratap Narain,*** JT 1992 (3) SC 423 and, in our view, rightly so. The Supreme Court in this case has held that the benefit of continuous officiation towards seniority is not confined to the period spent against a cader post, but includes the period spent against an excadre post.

13. In view of the aforesaid, we allow this petition and quash the order of the Tribunal passed in R.A. No.142/2003 dated 2.12.2003, since the order of the Tribunal has been passed in ignorance of the aforesaid decisions of this court and the Apex Court. We also quash the direction of the Tribunal in its order dated 22.5.2001 in O.A. No. 1941/1998 to the extent that it directed that the Petitioner would be permitted to reckon his seniority only from the date of his final absorption as UDC in the CSCS cadre. We direct the Respondents to count the seniority of the Petitioner in the Central Secretariat Clerical Services Cadre since 1.8.1970 in the rank of LDC, and from 17.12.1995 in the rank of UDC. With these directions, this Writ Petition is disposed off.

Parties are left to bear their respective costs.

VIPIN SANGHI, J

A.K. SIKRI, J.

September 27, 2007
P.K. BABBAR